IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 648 of 1992
With
CRIMINAL MISC.APPLICATION No. 6238 of 2001

In CRIMINAL APPEAL No. 648 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALIDAS SOMABHAI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KB ANANDJIWALA for Appellant(s) : 1,
MS DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 06/02/2007

CAV JUDGMENT

1. The judgment and order of conviction and sentence passed by the ld. Special Judge of District Panchamahals

at Godhara dated 30.05.1992 in Special (ACB) Case No.1/1989 is challenged by the appellant accused by filing present Criminal Appeal under section 379(4) of CrPC. While admitting the Criminal Appeal, this Court also directed to hear Cri. Misc. Application No. 6238/2001 along with the present Criminal Application while extending the bail already granted to the appellant accused earlier till the final disposal of the criminal appeal.

2. After evaluating the oral evidence led by seven prosecution witness and other relevant documentary evidence, the ld. Special Judge held the appellant accused guilty of the offence punishable under section 5(1)(d) of the Prevention of Corruption Act (Old) (hereinafter referred to as the PC Act) read with section 161 of the Indian Penal code and sentenced him under section 5(2) of the PC Act to undergo R/I for 1 Year and to pay a fine of Rs/500/ (Rs. Five hundred only) I/d to further undergo S/I for 1 month. However, no separate sentence was awarded for the offence punishable under section 161 of the Indian Penal Code.

3. Mr. KB Anandjiwala, ld. Counsel appearing for the appellant accused has taken me through the entire judgment under challenge and various grounds assailing

the legality and validity of the judgment under challenge mentioned in the memo of the appeal. It is submitted the finding recorded by the ld. Special Judge is erroneous on the grounds mentioned in the memo of the appeal because the prosecution has failed to prove the charge beyond reasonable doubt against the appellant accused. For the sake of convenience, the appellant has been referred to as “the appellant accused” and/or “the accused.”

4. To appreciate the contentions placed before the Court by ld. Counsel Mr. Anandjiwala for the appellant accused as well as by ld. APP Ms. Pandit, it would be appropriate for the Court to state the case of the prosecution in short. It is alleged that the appellant accused was serving as Economic Investigator in District Industries Centre (DIC for short) at Godhara and was a public servant. Complainant Satishkumar Navnitlal Suthar wanted a loan of Rs.23,000/ for the purpose of cottage industry from a nationalized bank and the loan application had to be processed by the DIC of which the present appellant was the Economic Investigator. If the loan application is processed by the DIC, only then the complainant can get the loan expeditiously and also can avail the subsidy as per the scheme. So, the loan application has to be processed by DIC and the accused had some role to play being Economic Investigator in the

DIC. The accused had visited the spot mentioned in the loan application and thereafter he demanded Rs.1000/ (Rs. One thousand only) from the complainant Satishkumar Suthar who in turn lodged a complaint with Anti Corruption Bureau (ACB for short). The complainant had no money to tender to ACB Inspector and so necessary arrangements were made by ACB Officers. Thereafter, in pursuance of the demand for illegal gratification, a trap was laid on 10.06.1986. It is alleged that after visit of the spot at the place mentioned in the loan application, the accused was transferred to Bharuch and had left the charge. So, on 10.06.1986, the accused had already taken over the new assignment at DIC, Bharuch. However, he was present/available in the office of DIC, Godhara on 10.06.1986 and was caught immediately after accepting the bribe amount of Rs.1000/ from the complainant in presence of panchas. ACB Officers after investigation, found that it was a fit case to file a chargesheet. So, after obtaining necessary sanction from the competent authority, ACB submitted the chargesheet against the accused. The charge was framed against the accused by referring relevant provisions of the Old Act as well as New Act that has come in force on the date of framing of the charge in the month of October, 1991.

5. Mr. Anandjiwala, ld. Counsel appearing for the appellant accused has taken me through the evidence of the complainant and panch witnesses. Having considered

the undisputed facts brought to the notice of the Court emerging from the oral evidence as well as admitted documentary evidence exh.16 & 25 that the accused was transferred from Godhara to Bharuch on 29.05.1986, forcible implication of the accused automatically emerges, is the backbone of the argument of ld. Counsel Mr. Anandjiwala. The entire incident is in the background of the events that had occurred between April-1986 and May 1986. According to Mr. Anandjiwala, though the case of the prosecution is that the first demand of illegal gratification was made by the accused in the month of April-1986, even then no formal complaint was filed though the complainant from the very beginning was not in a mood to pay any amount as bribe amount for processing his loan application. Assailing the character and conduct of the complainant, it is argued that inaction on the part of the complainant makes the case of the prosecution doubtful. There are material conflicts in the version of the panch as well as complainant. The ld. Special Judge was supposed to consider the entire case in the background of the defence pleaded by the accused and in the present case, even it is doubtful to believe that the second part of the panchanama was drawn at the spot and that too in the office of DIC, Godhara. Actually, on the date of arrangement of the trap, the accused was no more concerned with the loan application submitted earlier as the accused was transferred to Bharuch and it

is in evidence of one of the witnesses examined by the prosecution namely PW.6 Mr. Bava that the loan application of the complainant was already rejected and there was no scope for revival as number of such applications were granted by the DIC. In such a fact situation, the complainant was supposed to file a fresh application in the event of availability of the grant etc. But as the complainant was annoyed on account of the rejection of his application, he lodged a false complaint and on 10.06.1986 forcibly tried to plant the muddamal currency in the back side pocket of the pant of the accused. It is argued that the ld. Special Judge of course has referred the written explanation given by the accused after explaining incriminating circumstances under section 313 of CrPC, has not appreciated the evidence in correct perspective. According to Mr. Anandjiwala, there is no iota of evidence as to demand of bribe amount by the accused on the date of incident i.e. 10.06.1986 and there is no convincing evidence about the alleged demand made in the month of April-1986 because even the complainant was not sure that actually on which date the accused had paid the visit at the spot. It would be risky to accept the say of the complainant as gospel truth that initially the demand was made in the month of April-1986 for helping the complainant in processing the application for loan of the accused. There is no consistent evidence on the point of demand of the bribe

amount between the complainant and panch witnesses and as the accused had already left the charge much prior to the date of incident, he has no voice even in re-opening the case of the complainant or helping him in processing the application. Earlier application was already rejected. So, mere presence of the accused at the office of DIC, Godhara would not make him liable to explain the circumstances especially when it is the say of the accused that he was there in the office to obtain the Last Pay Certificate. After taking over the charge at Bharuch, he had proceeded on leave and on 10.06.1986, he had gone to his previous place of service i.e. at DIC, Godhara to obtain Last Pay Certificate and other relevant service record where he has been made scape-goat by implicating him in such a serious case. When the presence of the accused in DIC, Godhara is satisfactorily explained by him, then mere alleged recovery of the amount i.e. muddamal currency notes would not make him liable for accepting the bribe because the prosecution is supposed to establish four major aspects in such a case viz. (i) demand, (ii) agreement, (iii) demand of bribe amount immediately prior to the acceptance of the bribe amount, and (iv) actual acceptance of the amount as an illegal gratification. So, the mere acceptance of muddamal currency notes even if found proved, would not make the accused liable for punishment. There is no element of agreement or acceptance of bribe amount by

the accused in the evidence led by the prosecution. On account of failure on the part of ld. PP in obtaining permission from the Court to treat PW 6 Mr. Bava as hostile witness under section 154 of Indian Evidence Act, the version of PW Mr. Bava can be relied on by the accused and the ld. Special Judge has failed in appreciating the evidence of PW Mr. Bava in reference to the context of the evidence led by this witness. The story placed by the prosecution, according to ld. Counsel Mr. Anandjiwala, is highly improbable because the character and conduct of the accused reveals that he is not a straight forward honest person. Since April-1986 to June 1986 and till the date the accused left the charge of his office, he had never called the complainant either for work of processing the loan application or for renewal of demand of bribe allegedly made by him in the month of April-1986. In such a situation, the ld. Special Judge ought to have accepted the planting theory placed for appreciation. One of the arguments of Mr. Anandjiwala is that the Investigating Officer (IO for short) has not remained objective in selecting the panch witnesses. The Court is supposed to see the totality and the totality includes various aspects including the legal issues raised by the accused and defence theory. Quoting relevant para-11 of the decision in the case of **Bharatkumar Jaimanishanker Mehta v/s State, 1982(1) GLR 605,** it is submitted that the prosecution evidence alone

can not be considered for the purpose of coming to the conclusion as to whether the accused accepted the bribe amount or not. The onus lies affirmatively on the prosecution to prove the case beyond reasonable doubt and it can not derive any benefit from the weakness or falsity of the defence theory while proving its case. The ld. Special Judge in the present case, has mainly recorded the finding on the weakness of the defence placed by the accused and on some unconvincing explanation given by the accused. So, the finding recorded by the ld. Special Judge can be said to be based on conjectures and surmises. For the sake of convenience, I would like to quote relevant part of para-11 of the above-referred decision in the case of ***Bharatkumar Mehta (supra)***:-

> “11. It may be stated that in a criminal case whether it be under the Prevention of Corruption Act or under the Indian Penal code, the burden of proving the case beyond reasonable doubt is always on the prosecution. It is true that after it is established that the accused accepted the amount, presumption under section 4(1) of the Prevention of Corruption Act would arise. But for the purpose of coming to the conclusion as to whether the accused accepted the amount or not, the totality of the evidence led at the trial is required to be appreciated. The prosecution evidence alone can not be considered for the purpose of coming to the evidence led by the prosecution, the suggestions made by the defence in cross-examination of the prosecution witnesses, the version given by the defence and the defence witnesses, if any, examined at the trial, every thing is required to be considered in its totality and it is to be seen as to whether the total effect of the entire evidence led before the court is of a nature by which the only conclusion possible was that the accused accepted the amount. If such a

> conclusion is possible then alone it can be held that the prosecution established the case beyond reasonable doubt. In the first place we may say that all the three prosecution witnesses fully supported the prosecution case."

6. It is on record that the accused had already recommended in favour of the complainant on 06.06.1986 after investigating the matter. PW 6 Mr. Bava- Manager (Credit) of DIC, Godhara has also taken favourable steps for grant of loan application, but on account of disagreement by the Senior Officer, the application was not found acceptable and, therefore, it was ordered to be filed. When the complainant has a status of an accomplice in a bribery case, his oral evidence was required to be scanned closely and according to ld. Counsel Mr. Anandjiwala, the ld. Special Judge has accepted the say of the complainant as reliable piece of evidence. So, when there was no application pending on 10.06.1986, there was no scope to demand the amount of bribe nor to accept the same and so the evidence led by the prosecution as to the acceptance of the amount of muddamal currency notes under an agreement or prior understanding, was also required to be scanned closes and the ld. Special Judge has ignored the evidence that has come on record. It is in evidence hat there was no electricity supply in the office of DIC, Godhara at the time of laying out the raid and nobody has stated on oath that the ultra-violet lamp used by the trapping officer

was a battery operated lamp. In absence of such evidence, it is inferable that it was not possible to carry out the ultra-violate lamp test in the office of DIC, Godhara and the second part of the panchanama, therefore, ought not to have been accepted as reliable and corroborative piece of evidence to panch witnesses examined.

7. It is also the say of ld. Counsel Mr. Anandjiwala for the appellant accused that where there is no evidence of convincing nature as to the demand of the amount of bribe, then evidence of acceptance of the amount of bribe should be viewed with doubt in the cases where the raiding party officer has used anthracene powder instead of phenolphthalein powder because in absence of scientific data, the Court will have to rely upon the description given by the prosecution witnesses about the anthracene powder marks. There is clear inconsistency about the examination of the hands of the persons who were present in the room when the bribe amount was allegedly accepted. Therefore, the defence counsel was once compelled to raise an objection against the question posed by the ld. Presiding Officer of the Court. So, the findings of the ld. Special Judge about the recovery of the bribe amount from the left back side pocket of the pant of the accused requires to be reversed and the accused deserves acquittal.

8. On the other hand, ld. APP Ms. Darshana Pandit has submitted that there is consistency in the evidence led by the prosecution qua the demand of bribe made by the accused. Of course, there is no corroborative piece of evidence qua the demand made by the accused in the month of April-1986 when he visited the place in the capacity of the Economic Investigator, but there is a circumstance on record to show that a favourable endorsement was made by the accused in the month of April-1986. Though the complainant has not given the date of visit of the accused, but he has positively stated the day i.e. Saturday. The Court, therefore, should appreciate the relevant date of favourable endorsement made in the month of April-1986. The place of demand is also proved. The complainant has also narrated the type of negotiations that have taken place while demanding the bribe. There is ample evidence to show that after demanding the amount, the accused had given time limit to the complainant up to 02.06.1986. In the month of May 1986, the complainant had visited the place and till that date the accused was not transferred from Godhara to Bharuch and at his place during the month of May 1986, the complainant was asked to come down to the office of DIC. Godhara on Monday i.e. on 02.06.1986. Even for the sake of arguments it is accepted that there is no evidence of convincing nature qua the demand made in the month of April 1986, there is ample evidence to show that the demand of bribe amount

was made by the accused prior to his transfer from Godhara to Bharuch. It is not always necessary to prove the demand by direct evidence. The corroborative piece of evidence, may be of circumstantial nature, can help to prove the prosecution case. The demand made second time is proved by the complainant as well as the say of the complainant is corroborated by panch witness because the panch witness examined by the prosecution has positively stated that the accused had asked the complainant that "whether he had brought the money as discussed earlier or say as per talk with him earlier" (in Gujarati "Vaat Thaya Mujab"). In the same way, the conduct of the accused of accepting the amount of bribe also can be used as corroborative piece of evidence so as to prove the element of demand because the prosecution is supposed to prove that there was an agreement or clearcut understanding in the mind of the accused for acceptance of the illegal gratification. The hostility shown by PW 6 Mr. Bava and to some extent by Mr. Parmar, does not affect the strength of the evidence qua the recovery of the amount from the left side pocket of the pant by the panch witness and by raiding officer Mr. Ranganekar. The close reading of the evidence of PW Mr. Bava helps the prosecution and it is submitted by the ld. APP that the said part of the evidence of PW Mr. Bava convincingly supports the case of the prosecution because there is no inconsistency in the evidence of PW Mr. Bava qua the

recovery of muddamal currency notes from the custody/possession of the accused. According to ld. APP Ms. Pandit, the fact that PW Mr. Bava was knowing about the presence of the accused in Godhara town though he was already transferred and had taken over his charge at Bharuch, reveals that PW Mr. Bava was aware that the accused is going to come to the office during after-noon hours. Mr. Bava was enjoying senior position in the managerial cadre and his words about the visit of the accused in DIC, Godhara, are if taken as implied assurance, then neither the complainant nor the raiding officer can be said to have drawn any conjecture or surmises. The conduct of the accused as well as PW Mr. Bava does not look like a conduct of a person who is eager to help the accused in processing the loan application. There is no strength in the say of the accused that his file was closed on account of the rejection of the application because the say of the senior most officer was that the file would not be viable. The conduct of Mr. Joshi instead of helping the defence version, helps the prosecution because in view of the endorsement made while not approving the application, there was a scope for revival of the same file. So, though the accused was transferred, was eager to complete the file and had assured to show some favour to the accused, otherwise there was no need for any of the persons of the department i.e. office of DIC, Godhara to

show to the complainant the endorsement made earlier on his file. If the file was really closed, then how the same was lying on the table of one of the responsible officer i.e. P.W.5 Mr. Bava. It is neither the say of Mr. Bava nor of an Accountant who was present at the time of raid that the raiding officer has not drawn the panchanama then and there and no exercise of examination of muddamal currency notes and cloths of the accused under ultra-violate lamp has taken place in their presence, otherwise they could have shown their ignorance on this aspect. Ultra-violate lamp was used is the say of the complainant, independent panch witness and Mr. Ranganekar. So, these words used by the these three witnesses should not be considered as use of lamp with the help of electricity and it is not necessary for the prosecution witnesses to say that how the lamp was operated viz. whether it was by electricity or was a battery-operated lamp. PW Mr. Bava has referred the name of the accused as Mr. Patel and when the complainant had attempted to inquire about the accused, a positive response was given by PW Mr. Bava and according to Mr. Ranganekar, the file of the accused was lying on the table of Mr. Bava. In that fact situation, three different parts of panchanama makes the raid procedure adopted by Mr. Ranganekar, reliable. Pointing out the contents of page 299 from the paper-book, that the complaint of course was in general, but the complainant

was sure that Mr. Patel was to be trapped because he was the person who had initially demanded the amount and has given him list of 02.06.1986. The presence of the accused in the office of DIC, Godhara is a strong circumstance against him especially when there is no evidence to show that the Last Pay Certificate was issued by the competent officer on that very day to the accused. Such a piece of evidence could have been collected and produced by the accused to establish his presence as innocence presence at the office from where he was already transferred. It is true that the presence of the accused in the office of DIC, Godhara by itself is not an incriminating circumstance against him, but in reference to the total story unfolded by the complainant and other facts stated by panch witnesses, the Court should observe that as everything was settled and probably PW Mr. Bava was also knowing about the transaction, the complainant was asked to come in the after-noon when it was inquired initially on the day of raid. There is no evidence to show that the complainant was aware or knowing about the transfer of the accused nor Mr. Ranganekar was knowing about this aspect. Therefore only, the accused has been described as Economic Investigator of DIC, Godhara.

9. According to ld. APP Ms. Pandit, theory of planting is not acceptable at all. According to her, the amount

has been recovered from the backside pocket of the pant of the accused. It is not necessary for the prosecution to prove that from which place the pant of the accused was actually recovered. The prosecution has successfully established that the left back side pocket of the pant of the accused was found stained with anthracene powder. As per the accused, the complainant had forcibly tried to plant the amount in the back side pocket of the pant of the accused. It was not easy for the complainant to put the muddamal currency notes in the left side back side pocket of the pant when the accused had reached in the room wherein PW Mr. Bava and Accountant were sitting. Theory of planting of muddamal currency notes by the accused has been denied by the panch and there is nothing against the accused under which it can be inferred that he was selected for a particular purpose or he is not a man of repute. Considering the scope of renewal of the original application emerging from the evidence of PW Mr. Bava and the letter prepared in favour of one of the Bank recommending the application recovered during the course of investigation, brush asides the arguments of ld. Counsel Mr. Anandjiwala for the appellant accused that as the file of the complainant was already closed, nothing was required to be done by the accused and the complainant was supposed to make a fresh application and in processing that application, the accused would have no role to play being a person already transferred from DIC

Godhara and, therefore, there was no scope for the accused to demand the bribe nor to accept the same pretending to be a helper in processing earlier application. According to Ms. Pandit, the findings recorded by ld. Special Judge are based on correct and legal appreciation of the evidence. There is no error either of law or facts which can affect the ultimate finding of conviction recorded. The excuses that were placed by the accused before the ld. Special Judge, were found to be lame excuses and it would be incorrect to say that the conviction is recorded on the weakness found in the defence and not on the strength of the case of the prosecution and, therefore, appeal deserves to be dismissed.

10. I have considered the rival contentions placed before me in the background of the oral evidence read over by Mr. Anandjiwala thoroughly and documents pointed out by Mr. Anandjiwala as well as by Ms. Pandit. Undisputedly, the appellant accused was serving as Economic Investigator in the month of April-1986 in DIC, Godhara and the complainant was interested in getting his loan application processed for bank loan so that he can start his cottage industries. The application was made by the complainant in the month of January-1986, but there is nothing on record to show that any progress was made till April-1986. So, for the first time in the month of

April-1986, the complainant tried to inquire into the matter through the Clerk of DIC and he was informed that the papers at present are lying with Mr. Patel i.e. the appellant accused. The complainant had discussion about his election and he was informed that the accused would visit the place within 2 to 3 days and he was also informed by the accused to meet him on Monday and on that day, the complainant was given a hint that if he is genuinely interested in obtaining the loan, then “he will have to understand something” and so he i.e. the complainant had offered to prepare a dining table set for the accused. However, the accused had insisted that mere dining table set would not be sufficient and he shall have to pay something over and above and the complainant, therefore, offered that he would pay Rs.200/ to Rs.500/. In response thereto, the complainant was told that the work can not be done in Rs.200/ to Rs.500/ and he if pays Rs.1000/, then the accused will do that work, meaning thereby that the initial demand of bribe was made in the office of DIC, Godhara on Monday. It is rightly argued that there is no scope to have an independent evidence in this regard. It is true that there is no sufficient explanation by the prosecution qua the time gap between the date of visit of the place in the month of April-1986 and the date which was conveyed by the accused to the complainant i.e. 02.06.1986. The evidence of the complainant as to the initial demand, if

read in reference to the contents of the complaint exh.27, it emerges that the complainant was asked to fix the date for the payment and 02.06.1986 was selected by the complainant. The complainant was informed by the accused that until the payment is made, the papers shall not be processed further. The complaint is dated 07.06.1986. It is the say of the complainant that he had attempted to collect Rs.1000/ from the relations, but he was not able to collect the same. So, the ld. Special Judge has accepted the say of the prosecution that there is some strength in the evidence of the prosecution qua the initial demand made by the accused because the version of the complainant gets corroboration materially from the complaint and there is no modulation in the theory of the initial demand made by the accused nor any material improvement in the same.

11. The Court, while appreciating the evidence of the complainant, has given a look at the proceedings drawn by the trial Court and it is clear that this complainant was thoroughly cross-examined for hours together. A person working and earning his livelihood as a carpenter in a small village like Gaganpur of Ta: Godhara, whether could withstand such a lengthy cross-examination, is also a question which the Court should pose to itself and in that background, I have carefully read the examination-in-chief as well as cross-examination of this witness.

The complainant had stepped into the witness-box on 03.02.1992 and till the Court time was over, he was in the witness-box. His cross-examination starting from para-8 had continued for the whole day on 04.02.1992. So for two consecutive days, the complainant was in the witness-box. Further cross-examination has started from para-14 of the deposition on 05.02.1992 and it was concluded on that day. Considering the length of the cross-examination made on 05.02.1992, it is clear that the complainant must be in the witness-box at least up to the first part of the day. This witness has denied all crucial suggestions made by the defence side and has also denied that he has practically followed the accused Mr. Patel on the day of trap and had insisted to accept the amount requesting him to pay the same to anybody and to see that his work is done. On the contrary, it emerges from the deposition of the complainant that the amount was given when the same was asked by the accused on the day of the trap. It is in evidence that all relevant papers were submitted to the accused Mr. Patel till the end of March-1986, but he was not intimated that Mr. Patel has already recommended his case. The case of the complainant was recommended for the sanction of loan of Rs.23,000/, but the General Manager had decided to file the application saying it to be not viable and that the complainant was not aware till the end of April-1986 that his application has been filed by the General Manager

nor he was knowing the reason. He has denied the suggestion that he had told the accused that if anybody is required to be paid, then he should be paid, but his i.e. (complainant's) work should be done. The complainant when had denied the suggestion that prior to the date of raid before about 15 to 20 days he had not even visited even DIC, Godhara, then his say qua the conversation that has taken place between him and PW Mr. Bava and so also with the accused, should not be viewed with any shadow of doubt. It is true that the status of the complainant in the present case is of an accomplice because he himself had offered to provide a dining table set to the accused and had attempted to collect Rs.1000/ and had also offered Rs.200/ to Rs.500/ initially, his say should not be thrown away on this ground only because the settled legal position is that the evidence of the complainant in a bribery case should be scanned closely and if the complainant gets corroboration from any evidence, direct or indirect, then even on accepting the say of the complainant alone, the accused can be linked with the crime. The Court has a reason to believe that the accused was aware about the family background of the complainant because there is no serious dispute as to his visit at the place of the complainant. The complainant has 7 brothers and his number is 5th. He belongs to a carpenter family and he is also driving a motor truck. He has studied up to 12th Standard and, therefore, there is

enough strength in the denial of the complainant that he was tempted with the suggestion of a raiding officer Mr. Ranganekar and has agreed to trap anybody serving in DIC, Godhara. He has fairly accepted that the accused had informed him that he had been transferred and prior thereto, he had processed all the papers and the application has been filed, but he denied that he was also informed that General Manager Mr. Joshi has decided to file the application. The ld. Special Judge has appreciated all the documents i.e. documents admitted by the defence counsel by putting endorsement on the list of documents tendered by ld. PP as well as the documents tendered in evidence by this witness. Of course, at one or two places, it is indirectly indicated by ld. Spl.Judge that PW Bava as well as Mr. Joshi may have played some colourable role in the entire matter and he has also observed indirectly that PW Bava could have been joined as one of the co-accused in the matter, but that by itself would not absolve the accused from his conduct and the criminal wrong that he had committed qua the entire incident.

12. It is true that this Court while dealing with the appeal against the order of conviction can re-evaluate the entire set of evidence and appreciate the say of the accused at large in the background of the totality that may be pointed out, but when the Court is convinced that the reasons for reaching to the conclusion of a

conviction are based on a sound legal and correct appreciation of the fact by even ignoring certain minor surmises, then it is not necessary for this Court to re-write the judgment and this Court can adopt the reasons assigned by the lower Court. This Court is not convinced on the arguments advanced by ld. Counsel Mr. Anandjiwala that the accused had no role to play in the entire matter because the application of the complainant was already filed by the General Manager Mr. Joshi and it could not be revived at all unless a fresh application is made. This aspect has been elaborately discussed by commenting upon the evidence of PW Mr. Bava as well as Mr. Joshi by the ld. Special Judge because it has been observed by the ld. Special Judge that the application was not specifically rejected assigning any reasons, but only viability was questioned. If Mr. Bava was sure that after the endorsement of Mr. Joshi, it will not be possible to forward the application to the Bank with recommendations, then why Mr. Bava has prepared a letter addressing the concerned Branch Manager of the Bank even by signing the same? So, it is clear that the receipt of Rs.1000/ was eagerly awaited which was to be accepted by Mr. Patel. There is no evidence as to which was the procedure to be followed by the DIC in processing such applications, but it is the experience of the Court that any endorsement made by the senior most officer, if is otherwise explainable, then further submissions can be made and one

endorsement of Mr. Bava showing the viability could have been brought a favourable result. The endorsement made below the application if is genuine, then there was no reason for the Manager or the office to keep the file on the table of the officer to deal with the subject, namely PW Mr. Bava, because the file of the complainant was recovered from the table of Mr. Bava when Mr. Bava was present in the room where the accused had accepted the bribe amount in the presence of panch. The availability of insufficient light in the office room would not make the entire case of the prosecution doubtful as to the demand of the bribe amount and passing of the muddamal currency notes to the accused because even in absence of electricity during the day time and that too in the early after-noon hours i.e. before 4.30 to 5.00 p.m. or any time prior thereto, reasonable visibility exists unless it is a dark room or a strong room which are being erected with a design to remain dark even during day hours. The demand is to be heard if orally made. If the demand is made by gesture, then such a gesture so made can be visualized in a minimum day light available and it is neither the the say nor the case of the defence that there was no visibility at all where Mr. Bava and the Accountant were sitting in a room. Loan application exh.28 is a complete document and initial application was for Rs.25,000/ with a wish to have sanction/ recommendations of at least for Rs.23,000/. Manager

(Credit) recommended the case for Rs.23,000/. This document exh.29 is annexed with other documents. Initially, the Bank of Baroda was to be recommended and if the documents exh.29/1, 29/2 and 29/3 are seen carefully, it is clear that vide document exh.29/3, the complainant was to be intimated that his application has been forwarded to Bank of Baroda, Godhara Branch and, therefore, the complainant should contact the concerned Branch Manager. This document also bears signature of Manager (Credit) i.e. PW Mr. Bava. Only dispatch number of the office and date has not been inserted in the said document i.e. letter of recommendations. In the same way, exh.29/1 and 29/2 are the letters in duplicate addressed to the Branch Manager, Bank of Baroda, Godhara where one officer has also counter-signed putting the date 07.04.1986. In this background, the oral version of Mr. Bava & Mr. Joshi was required to be appreciated and it is difficult for the Court to say that for all purpose, chapter of the application filed by the complainant was closed way back in the month of April-1986. Surprisingly, the General Manager who had made the endorsement i.e. P.W.2 Mr. Mahendra Joshi, had not even cared to intimate the complainant about the endorsement made. Surprisingly again, he had shown his ignorance about the handwritings of the endorsement made on the reverse side of page No.1 of the said document. However, it is clear that a form regarding local inspection and visit bears signature of

the accused and the date is shown to be 06.04.1986. After transfer of Mr. Joshi in the month of May-1986, one Mr. I.F Dave was holding the charge of his office and he was holding the charge of General Manager of DIC, Godhara as well as Vadodara. PW Mr. Bava was Class:II officer. A pointed question was asked by the Court to this witness Mr. Joshi. If Mr. Patel and Mr. Bava both were aware that the application of the complainant has been ordered to be filed being not viable, then there was no reason either for Mr. Patel or for Mr. Bava to respond to the complainant in the manner in which they had responded till 02.06.1986 and even on the date of raid i.e. on 10.06.1986. The conduct of Mr. Bava if is able to create a circumstance in favour of the prosecution, then it can be used against the accused because the prosecution is consistent that the accused was the first key person in processing the application and he is the person who was found with muddamal currency notes stained with anthracene powder and there is satisfactory evidence on record to show that it was recovered from the left back side pocket of the pant of the accused and his hands were found stained with anthracene powder along with the pant that was put on by him. There was nothing on record to show that the pant put on by the accused was not having any pocket on the back side i.e. on the heap and there is no reason to discard the evidence of an independent witness i.e. PW 3 Galabhai Patel.

13. It would not be either legal or proper for the Court to condemn the evidence of this panch witness PW 3 exh.33 Mr. Galabhai Patel on the ground that he belongs to a particular department. Mr. Anandjiwala has attempted to argue that R & B department is a known corrupt department and only with a view to see that any pressure can be brought on the person serving in the said department, IO Mr. Ranganekar has selected a Junior Clerk from that department, is the argument which is neither legal nor convincing. The witness is an independent witness and integrity and honesty of a person/witness depends on each individual. The place of service or department of service is not a matter of relevance at all. The panch witness has remained consistent and there are no material contradictions and his oral version gets ample corroboration from the panchanama exh.33. The first part of the panchanama was drawn at 11.15 A.M. and then second and third part of the panchanama was drawn in the latter part of the working hours. On each occasion, he has remained with the complainant. It is true that the process of preparing a panchanama and seizure of the document etc. has been done till late evening, but ultimately, the Court should see the date and the raid was carried on 10.06.2006. So, that day was heading towards the longest day of the year having a broad day light. 21st June is the longest day of the year. So, on 10.06.2006, there must be enough day light up to 7.30

p.m. i.e. up to 19.30 hours. So, the arguments advanced by Mr. Anandjiwala on the point of absence of electricity is not found helpful in any manner to the accused. PW 4 Mr. Pravinkumar exh.37- Accounts Officer serving with PW Mr. Bava and PW Mr. Bava are found interested in favour of the accused. However, the evidence of these two witnesses materially corroborates the version of the complainant and the panch witness so far as the acceptance of the amount of bribe and recovery of the same is concerned. PW Pravinkumar Parmar-Clerk serving in DIC, Godhara has been declared hostile. Of course, the evidence collected in the nature of contradiction can not be read as a substantive piece of evidence, but this witness has proved the endorsement on the reverse side of page-1 of exh.29 that the same is in the handwritings of Mr. Patel. Mr. Patel has already received a transfer order on 29.05.1986. He had left the charge on 02.06.1986. So, it was not impossible for the accused to fix the date of next Monday for accepting Rs.1000/. As per the calender, 2nd June 1986 was a Monday.7th & 8th June, 1986 were Saturday and Sunday. On 9th June, 1986, the offices were closed it being a public holiday declared on account of the festival of Idd. So, the inquiry about the person of the accused was made on 10.06.1986 and the complainant was informed that Mr. Patel i.e. the accused will be available in the after-noon. There is no reason to disbelieve the complainant whereby he has stated that

he has approached Mr. Ranganekar on 9th June, 1986 but as that day was declared as a holiday, he was asked to come on the next day and, therefore, he reached the office of ACB at 11.00 A.M. On 11.06.1986 and after reaching to the office of DIC, Godhara, the complainant inquired from the Clerk about the whereabout of accused Mr. Patel. Thereafter, they i.e. complainant and panch witness had gone to Mr. Bava and Mr. Bava had informed them that Mr. Patel will come at about 3.00 P.M. And they should come at that time and as Mr. Patel could not reach, both of them along with raiding party persons had returned to the Rest House and informed Mr. Ranganekar about the happenings. This part of the evidence has been correctly appreciated by the trial Court in the background of other evidence.

14. So, I am not convinced that there is no legal and convincing evidence on the point of demand or as to acceptance. It has satisfactorily come on record that the currency notes stained with anthracene powder recovered from the accused were the same and the same were accepted under a clear-cut understanding between the accused and the complainant in presence of panch P.W.3 Galabhai.

15. It is settled legal position that the demand and acceptance of a bribe can be proved by the complainant alone and corroboration even if need be, it need not be

direct and it can be by way of satisfactory evidence also as observed earlier. In case of **M.O. Shamsudhin v/s State of Kerala, 1995 AIR SCW 2717 (page 2728),** the Apex Court has held thus:-

> " Now, coming to the nature of corroborating evidence that is required, it is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The Court should weigh the evidence and then see whether corroboration is necessary. Therefore, as a rule of law it can not be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and what should be its nature depends upon the facts and circumstances of each case."

This decision has been followed in the subsequent

decision in the case of **Rameshkumar Gupta v/s State of Madhya Pradesh, AIR 1995 SC 2121.**

16. There was no for the complainant to implicate falsely Mr. Patel if he was really aware that Mr. Patel is transferred from Godhara to Bharuch and he shall have to initiate the process for obtaining loan afresh by submitting a fresh form and application. There was no animosity between the accused and the complainant. He was an applicant and was interested in obtaining loan. His anxiety was to see that his application is processed as expeditiously as possible. In such a case, bare denial on the part of the accused or mere suggestion of planting of currency notes forcibly would not help the accused. This is a case where a presumption legitimately could have been drawn against the accused as there is sufficient evidence as to the demand and acceptance of bribe amount. This presumption could have been rebutted as well by the accused by placing probable explanation, but an attempt to tender such explanation made by the accused is found failing. As observed earlier, there is no merit in the say that Mr. Ranganekar and the complainant were in a mood to implicate anybody from the office of DIC, Godhara. There is no convincing evidence to show that the presence of the accused at Godhara though he was transferred to Bharuch was innocent presence. There is no strength in the argument that the

chapter of the loan application filed by the complainant was closed and, therefore, there was no scope for the accused to demand bribe amount or to accept the same. There is no explanation as to why the papers were kept pending as if the application is live lying on the table of the responsible officer like Mr. Bava- Manager (Credit)who is a Class:II Officer and why a letter was kept ready for dispatch to the Branch Manager of Bank of Baroda recommending the grant of loan of Rs.23,000/ with the intimation to the complainant with signature of Mr. Bava ? The theory of forcible planting of money in the back side pocket of the pant is found totally unconvincing because there is no reason for the Court not to accept the say of the prosecution that the same were recovered from the left back side pocket of the pant and it is not easy to insert the muddamal currency notes in the back side pocket of pant of the accused forcibly and that too while walking in the office premises or at the time of entering the room where Mr. Bava and Accountant were sitting. How Mr. Bava was knowing that Mr. Patel i.e. the accused is going to visit the office at 3.00 P.M. ? All these questions and circumstances speaking against the accused have not been answered in any satisfactory manner. This is not the case of a mere recovery of muddamal amount from the custody of the accused. So, the ld. Trial Judge can not be said to have committed any error in arriving at a conclusion of guilt

proved beyond reasonable doubt. Therefore only, the Court has decided to adopt the reasons assigned by the ld. Trial Court while discussing the details of evidence of each witness examined. Hence, there is no merits in the appeal so far as the order of conviction recorded against the appellant accused is concerned and the same deserves to be dismissed.

17. So far as quantum of punishment is concerned, it is submitted by ld. Counsel Mr. Anandjiwala for the appellant accused that the case is old by more than 20 years. The accused has remained on bail for all these period all through out. The present prosecution is under Old Act. Of course, the charge has been framed under New Act simultaneously. The ld. Special Judge while deciding the quantum of punishment has considered the relevant provisions of the New Act under which the minimum sentence is prescribed. In a case of offence committed under the Old Act, there was no minimum sentence prescribed and the Court can impose any punishment including the sentence. By placing reliance on the decision in the case of ***Ramesh Kumar Gupta (Supra),*** it is submitted that the accused should be imposed minimum punishment of a day or two or maximum punishment for a week because after the conviction order came to be passed by the trial Court, the appellant accused has been dismissed from the service and he has lost all the

benefits which a government servant is entitled to get. Termination of service practically is a economic death and the Court should not be deterrent in continuing the quantum of punishment as imposed by the trial Court and therefore this appeal at least should be allowed partly by reducing the sentence imposed accordingly. These were the alternative submissions of Mr. Anandjiwala, ld. Counsel appearing for the appellant accused and the Court is convinced with these submissions and is of the opinion that in a given case, the Court can award any reasonable punishment -substantive sentence in a case under the Old Act as there is no minimum punishment prescribed under the Statute i.e. under section 5(2) of the PC Act or under section 161 of IPC. So, without disturbing the amount of fine imposed and sentence imposed in default of payment of fine amount, the order imposing sentence to the appellant accused requires to be altered and to that extent, the present appeal requires to be allowed. Under these circumstances, if substantive sentence is reduced to R/I for 1 month, will serve the purpose. Going to prison after a lapse of more than 20 years by itself would be a matter of great mental torture for the accused and entire family. That by itself would deter not only the accused, but to the members of the society indulging in corrupt practice and criminal misconduct.

18. In the result, the present appeal is partly allowed.

The impugned judgment and order of conviction dated 30.05.1992 passed by the ld. Special Judge, Panchmahals at Godhara in Special Case No.1/1989 whereby the ld. Special Judge has convicted the appellant accused for the offence punishable under section 5(1)(d) of the PC Act read with section 161 of IPC in exercise of powers under section 5(2) of the PC Act, is hereby confirmed. However, the order of sentence is hereby altered/modified and reduced to the extent that for the aforesaid offences, now the appellant accused shall undergo R/I for 1 Month instead of R/I for 1 Year as imposed by the ld. Special Judge vide the impugned judgment. The order imposing fine and sentence in default of payment of fine is hereby confirmed. However, no separate sentence for the offence punishable under section 161 of IPC is imposed on the appellant accused. Bail Bonds of the appellant accused shall stand canceled, but as the accused was on bail pending trial, he is directed to surrender to the trial Court to serve the sentence on or before 23.03.2007, failing which the ld. Special Judge shall issue Non-Bailable Warrant against the appellant accused. Criminal Appeal is partly allowed to the extent aforesaid.

19. Cri. Misc. Application No. 6238/2001 filed by the appellant accused to permit him to lead additional evidence is also not found acceptable. The evidence of bad character of a witness is admissible provided his

attention is drawn when he is in witness box and the events subsequent to the incident can not be said to be relevant for any purpose. It is also settled legal position that the evidence of a witness should not be discarded merely on the ground that he himself has any criminal antecedents in the past. The version of a witness is to be tested on the touch-stone of cross-examination and other totalities, otherwise no individual having some criminal antecedents can have successful recourse to judicial and objective adjudication of his grievance in the capacity of a complainant, if victimized. This application could have dismissed even prior to the hearing of the present criminal appeal and I was also inclined to dismiss the same on the day on which it was fixed for hearing, but as it was observed by the earlier Bench that the same should be heard along with the main criminal appeal, the same is being dealt with along with this judgment and simultaneously with the final hearing of the appeal. It is further observed that the application is not dismissed merely on the ground that it is likely to open entire process of examination of the witness namely the complainant and protract the hearing of the appeal, but as there is no merit or otherwise relevance, the same is ordered to be dismissed. Hence, Cri. Misc. Application preferred by the appellant accused is also hereby dismissed.

[C.K. BUCH, J]

*rawal